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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,810	10/01/2001	Alan F. Graves	7000-469	3412

7590 12/28/2005
Withrow & Terranova, P.L.L.C.
P.O. Box 1287
Cary, NC 27512

EXAMINER

WANG, QUAN ZHEN

ART UNIT PAPER NUMBER

2633

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/965,810

Applicant(s)

GRAVES, ALAN F.

Examiner

Quan-Zhen Wang

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 8-16.
Claim(s) objected to: 18-23, 27-30, and 32.
Claim(s) rejected: 17, 24-26 and 31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


JASON CHAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant's arguments filed on 12/14/2005 have been fully considered but they are not persuasive. Applicant argues that the Office Action "fails to provide any evidence to support" the "motivation to combine the references". The Examiner disagrees with the applicant. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In addition to the motivations provided in the Office Action, Lu further teaches: "[0056] Before the signals are multiplexed, optionally, an attenuation/compensation block 470 can be provided. This block may alternatively, or additionally, be placed at inputs to the switch. The purpose of this block is to control the optical characteristics of each of the wavelength, ... It can involve dispersion compensation, and other types of compensation for degradations that vary with wavelength. [0057] As the optical gain provided by the optical amplifiers, the attenuation and compensation provided by block 470 may need to be optimized on a network wide basis, ... Also, the optical path control software is shown coupled to the routing control software, to enable the optical characteristics to be optimized depending on the source and destination of the wavelengths being transmitted." It is well known in the art that dispersion compensation is one of the optical characteristics needed to be optimized for an optical communication system. Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to incorporate a dispersion discrimination, as it is taught by Cai, in the system of Lu in order to optimize the optical characteristics. Furthermore, Lu's system is "dynamically determining possible restoration routes, and re-routing each wavelength along a chosen one of the possible restoration routes". When a wavelength is routed to pass through different routes, the dispersion for the wavelength changes, as it is shown in column 3 in fig. 6. Lu specifically teaches: "[0082] ... The optical characteristics may vary slightly with time or vary as components of parts of the network are upgrades. It may be possible to measure these characteristics dynamically at each node." This is yet another solid ACTUAL EVIDENCE for one of ordinary skill in the art at the time when the invention was made to incorporate a dispersion discrimination, as it is taught by Cai, in the system of Lu. For the reasons above, the combination of the references is strongly supported by actual evidence and the combination of the references teaches every limitation of the claimed invention. The rejections with regard to claims 17, 24-26, and 31 still stand..